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STATE
OF THE
DEMANDS
OF
SUNDRY CONTRACTORS
UPON THE
CROWN of GREAT BRITAIN,
FOR
FORAGE, &c.

Delivered into the King's MAGAZINES, for the Uſe of the BRITISH Combined Army; to the Troops of the ſaid Army; — Taken by the Enemy; — Deſtroyed by Order of the Commander in Chief; — And left unreceived, after it had been provided to perform their Contracts with the Britiſh Commiſſariate, &c.

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STATE of the DEMANDS

OF

Meſſ. BORDELIUS, DELIUS, and Co.

&c.

ON the twelfth of September 1761, a contract was made at Munſter, by Mr. Commiſſary-general Frederick Halſey, with Mr. Peter Ernſt Delius, by which the ſaid Mr. Delius undertook to deliver into the Britiſh magazines at Munſter, Oſnaburg, and Lipſtadt, 300,000 complete rations of forage, of good quality, within two months, for which he was to be paid at the rate of 15 Dutch ſtivers per ration; the payment to commence as ſoon as 20,000 rations were delivered, and juſt and valid receipts of the magazine-keepers produced by him.—And if the poſition of the army ſhould require additional magazines to be eſtabliſhed in the neighbourhood, Mr. Delius was to be paid the ſame price for forage delivered into them, by order in writing from the Britiſh Commiſſariate, as for that delivered into the maga-

zines. And farther—if a corps or detachment of the Britiſh troops ſhould approach the place where his ſtores lay, and require to be ſerved from them, on their receipts, Mr. Delius was previouſly to obtain an order in writing from the Commiſſariate to ſerve them, otherwiſe ſuch receipts were not to be accepted on account of this contract—with other uſual clauſes.

And—on the firſt day of November next following, another contract was made at Munſter aforeſaid, between the ſaid Mr. Commiſſary-general Halſey, and Mr. Bordelius, (partner with Mr. Delius aforeſaid) by which the ſaid Mr. Bordelius undertook to deliver into the King's magazines, at Munſter and Ham, 200,000 complete rations of forage, of good quality, for which he was to be paid at the rate of 15 Dutch ſtivers per ration, the payment to commence as ſoon as 50,000 complete rations ſhould be delivered, and juſt and valid receipts of the magazine-keepers produced by him—with other uſual clauſes, the ſame as in the former contract, (though without any expreſs reference to it) except that in this contract, no time was limited for Mr. Bordelius's delivering the forage, nor any

permiſſion

permiſſion given him to ſerve the troops, but that all the forage was to be delivered into the magazines really and *in naturâ*; and that if a fraud ſhould be diſcovered, or that receipts ſhould be attempted to be introduced inſtead of forage, the whole quantity already delivered was to be confiſcated to the King.

And—on the ſixth of March 1762, the ſaid Meſſ. Bordelius, Delius, and Co. agreed further with Mr. Commiſſary-general Halſey aforeſaid, at Munſter, to deliver out of their depots, 30,000 complete rations into the Britiſh magazine at Dullmen, and 30,000 complete rations into the magazine at Coesfeldt, which the Commiſſariate was to accept of on the terms and conditions of the contract entered into with the ſaid entrepeneurs.

And again—on the thirty-firſt of May, next following, Mr. Commiſſary-general Elliot, gave a permiſſion to the ſaid Meſſ. Bordelius, Delius, and Co. to deliver, on the terms of the above contract, 20,000 complete rations more, at Coesfeldt, until the Commiſſariate ſhould forbid it.

In the courſe of theſe tranſactions, Meſſ. Bordelius, Delius, and Co. received, on the twelfth of April 1762, at Munſter, from

Thomas Higgins eſq. Commiſſary of Accounts, a certificate for forage delivered by them into the King's magazines, at Ham, Wahrendorffe, Dullmen, and Coesfeldt; and to the troops, in the months of February, March, and April, 1762, amounting to 66039 Guilders.

And on the twenty-third of the ſame month of April 1762, the ſaid Meſſ. Bordelius, Delius, and Co. received at Munſter, from Mr. Commiſſary Higgins aforeſaid, another certificate for forage delivered into the King's magazines at Dullmen, Furſteneau, and Coesfeldt; and to the troops in the months of March and April, amounting to 55067 Guilders, and 7 Stivers; in both of which certificates, the ſaid Mr. Higgins expreſly ſays, "that he had examined the original accounts of theſe "deliveries, and received the receipts "of the magazine-keepers, and of the "troops for the ſaid forage, and found them "conformable to the contracts made by "the Britiſh Commiſſariate with the ſaid "Meſſ. Bordelius, Delius, and Co. on "the twelfth of September and firſt of "November 1761."

Upon

Upon theſe certificates warrants for payment were directly granted by W. N. Elliot eſq. Commiſſary-general, on the twelfth and twenty-fifth of the ſaid month of April 1762, directed to Peter Taylor eſq. Deputy Paymaſter-general, who, on preſenting them to him to be paid, gave for anſwer, "that he had no money in his "hands; but that General Howard was "expected daily, with remittances."

Directly contrary as this anſwer was to the expreſs terms of their contract, by which they were to receive payment upon producing proper vouchers for the delivery, of leſs than the third part of the forage, contained in theſe certificates, they were obliged to ſubmit to this diſappointment; and proceeded, without relief, to deliver, according to their contracts, till the beginning of November following; when, upon their applying to Colonel Pownal, Director-general of Control, at Hameln, to counterſign the certificates, which they had received for other deliveries made by them, he replied, that a complaint was lodged againſt them by Mr. Maſon, Commiſſary of Control, for frauds diſcovered in their deliveries at Coesfeldt; till they had

cleared up which, he could do nothing in the affair, referring them to Mr. Maſon for the particulars.

Aſtoniſhed at this information, they applied to Mr. Maſon, who delivered them a notarial inſtrument, purporting to be the examination of Englebert Hagedorn, one of the King's magazine-keepers, taken on the ſecond of September preceding, in which he had declared upon oath, " that " on the twenty-eighth of May 1762, he " had given to Sprenger (clerk to Borde- " lius, Delius, and Co.) a receipt for 196 " rations of oats, which oats he had not " received into his Majeſty's magazine, but " was promiſed payment for it; and that " he had alſo given to the ſaid Sprenger " another receipt for 5000 rations of hay " and 6996 rations of ſtraw, which had " not been delivered into the magazine; " to which he was induced by the ſaid " Sprenger's telling him that the French " were coming, and promiſing him to pay " him at a price that would be eaſily fixed " between them: and that, on the twenty- " ſeventh of June 1762, at his quarters in " Coesfeldt, he had received from Spren- " ger ſix regimental receipts, amounting

" to

" to 123 complete rations, dated on the
" twenty-fifth and thirtieth of June, for
" which he had likewiſe given a receipt to
" Bordelius, Delius, and Co. on promiſe
" of being paid for it.---And that he had
" included the receipt dated the twenty-
" eighth of May, for 196 rations of oats,
" in the general receipt of the tenth of
" June, for 15614 rations, and the receipts
" for 5000 rations of hay and 6996 rations
" of ſtraw, together with the ſix regimental
" receipts, amounting to 123 complete ra-
" tions, in the general receipt of the twen-
" ty-ſecond of June, for 3597 rations of
" oats, 17392 rations of hay, and 32296
" rations of ſtraw: beſide which three
" receipts he did not recollect to have
" given any more, without having actu-
" ally received the forage for them."

What Meſſ. Bordelius, Delius, and Co. muſt have felt at this account may be eaſily conceived. They expoſtulated with Mr. Maſon and Mr. Pownal, on the injuſtice of not informing them of it while the accuſer was upon the ſpot, and could have been confronted by them; and on the unfairneſs of keeping it two months concealed, and letting them go on with their deliveries

ries in the mean time, as if a deſign to ruin them, by making the confiſcation ſtill greater.—They urged the utter incredibility of an accuſation made profeſſedly in extenuation of the guilt of the accuſer, as appears by his anſwer to the third interrogatory, propoſed to him by Mr. Maſon, in which he ſtrives to evade the charge of embezzlements which muſt fall ſolely upon himſelf, by his admiſſion of another crime, in expectation that the penalty to which thoſe whom he accuſed of being his accomplices were ſubject, might lighten his own puniſhment.—And, they ſhewed the falſehoods, falſifications, and contradictions, evident on the very face of the accuſation; ſuch, for inſtance, as his dating at Coesfeldt, a report he made at Munſter; his ſwearing that he had received the regimental receipts from Sprenger at Coesfeldt, on the twenty-ſeventh of June, whereas he had before ſworn, that he had left Coesfelt on the twenty-ſecond in the morning, and had arrived in Munſter on the twenty-ſixth at mid-day, where he had actually delivered in his report to Mr. Maſon, on the twenty-ſeventh—and many others evident on the face of his examination,

tion.—And they alledged the ſeverity of making them ſuffer for a crime in which the accuſer himſelf had never dared to involve them perſonally, or aſſert their being in the leaſt privy to it.—But all they could urge proved ineffectual to exculpate them in the ſight of judges, who, from their conduct in the affair, appeared to deſire that they ſhould not be exculpated.

Anxious to acquit themſelves of a charge equally injurious to them in their characters and their fortunes, they reſolved to ſeek for other proofs of their innocence, ſince reaſon alone was not thought ſufficient. With this deſign they applied to the magiſtracy of Munſter for a warrant to take up Sprenger, (their ſub-deliverer, who had been accuſed by Hagedorn, as his immediate accomplice in the frauds alledged by him) but upon examining the information of Hagedorn, the magiſtrates were of opinion that it was by no means ſufficiently proved to juſtify their granting ſuch a warrant; but adviſed the ſaid Meſſ. Bordelius, Delius, and Co. to have him examined upon interrogatories formally, and upon oath, which they accordingly did.

By

By his anſwer, ſworn in the preſence of two credible witneſſes, before a notary public, and duly atteſted by him, he " de-
" nied poſitively and expreſly having
" ever got receipts from Hagedorn for
" more forage than he had really received
" —So far from which he aſſerted, that he
" had not got them even for all which he
" had delivered, Hagedorn having fod-
" dered his own horſe with the forage be-
" longing to Meſſ. Bordelius, Delius, and
" Co. which he had not made good; and
" moreover, that he had ſold to one Pintz, a
" Jew at Coesfeldt, between 5 and 6 molden
" of barley, and to the town-clerk Brawn-
" ſchweig there, 18 ſacks of oats, each of
" 4 himpen, which as he, Sprenger, was
" the only deliverer in the magazine at
" Coesfeldt, muſt have been ſtolen from
" him.—The circumſtances of his having
" given him the regimental-receipts were
" theſe: Hagedorn was ſo negligent and
" unacquainted with his buſineſs, that he
" frequently applied to him (Sprenger) to
" aſſiſt him, which he did by diſtributing
" forage for him to the troops, for which
" he took their receipts, and then gave
" them up to him; upon ſettling for him
" the

" the accounts of ſuch diſtribution; in
" which accounts he was ſo negligent, that
" he (Sprenger) had often told him he
" would ruin himſelf; as an inſtance of
" which negligence, he had often ſeen regi-
" mental receipts trodden under foot about
" him, and had been obliged to procure
" one Muller of Coesfeldt, to counterfeit
" two receipts which he had loſt—and
" that as to his having promiſed him pay-
" ment for the forage ſpecified in ſuch
" fraudulent receipts, he poſitively denied
" it, and alleged in ſupport of ſuch denial,
" his having Hagedorn's promiſſary note
" then in his poſſeſſion, for 222 Rd.
" which the ſaid Hagedorn owed him be-
" fore the time upon which he fixed the
" date of theſe tranſactions, and ſtill did
" owe him; which note it was moſt im-
" probable Hagedorn ſhould have left re-
" maining in his hands, had he been to re-
" ceive any payment of the kind from him
" —and concluded with averring the whole
" purport of Hagedorn's accuſation to be
" directly and abſolutely falſe and ground-
" leſs; as a proof of which, he inſtanced the
" contradiction and perjury beforemen-
" tioned, in his ſwearing that he had re-

" ceived

" ceived thoſe regimental receipts at Coes-
" feldt on the twenty-ſeventh of June,
" whereas he had before ſworn, that he left
" Coesfeldt on the twenty-third, and had
" arrived at Munſter on the twenty-
" ſixth, where he actually delivered in
" his report to Mr. Maſon on the twenty-
" ſeventh --- the very day he had ſwore he
" had taken the receipts at Coesfeldt."---
And in confirmation of this teſtimony of the ſaid Sprenger, and as a farther confutation of the charge of Hagedorn, they alſo ſummoned William Berg, who had been an aſſiſtant to the ſaid Hagedorn, in the King's magazine at Coesfeldt, before a notary, to give an account of all that he knew concerning theſe tranſactions; who voluntary ſaid, and offered to make oath, when required, " that he had lived in Coes-
" feldt at the time when theſe tranſactions
" were ſaid to have paſſed, as aſſiſtant to
" Hagedorn, and had the joint care of
" the King's magazine there, with him---
" that ſometimes he, ſometimes Hagedorn,
" and ſometimes Sprenger, at the requeſt
" of Hagedorn, who was ſickly, and could
" not riſe early, diſtributed the forage to the
" troops, and took their receipts, as he
" himſelf had often given to Sprenger all

" the receipts which he had taken from
" the troops for ſix or eight days ſuc-
" ceſſively, to ſettle for Hagedorn.---And
" that beſide the forage which he delivered
" to the troops, he had alſo delivered to
" one Pintz a Jew, about 40 ſcheffel of
" barley, as nearly as he could recollect,
" out of the King's magazine, by order of
" his maſter Hagedorn."

Confiding in ſo clear a refutation of a charge that in reality refuted itſelf, Meſſ. Bordelius, Delius, and Co. preſented theſe atteſtations of Sprenger and Berg, to Colonel Pownal, to be laid before the Lords of the Treaſury, who had taken the deciſion of the affair to themſelves; but though they repeatedly, and in the moſt earneſt terms ſolicited him for their lordſhips reply, they never could obtain it.

Hard as this delay was upon them, it was not the only hardſhip which they experienced on this occaſion. They had expended their own fortunes, and ſtrained their credit to its utmoſt extent, to fulfil their contract with the Britiſh Commiſſariate; and now when they expected, when they were in the ſtricteſt juſtice entitled to expect immediate payment, not only

only theſe two warrants for ſo conſiderable a ſum were ſtopped, but Colonel Pownal refuſed alſo to counterſign their other certificates, to which no objection of any kind was, or could be made.

In this diſtreſs they were obliged, in order to avoid involving their friends in utter and inſtant ruin, to ſubmit to the cruel neceſſity of depoſiting theſe two warrants in the hands of Mr. Commiſſary-general Leigh, till the determination of the Lords of the Treaſury could be obtained, to induce Mr. Pownal to counterſign the other certificates, that they might receive payment on them.

Under theſe difficulties they remained without redreſs, till the order was iſſued for bringing all demands on account of the war before Commiſſioners in London.

In obedience to this order they delivered their unſettled accounts into the office of the ſaid Commiſſioners, in the latter end of the month of December 1763, among which accounts were theſe two warrants, and ſeveral receipts for other deliveries made at Coesfeldt, on Mr. Elliot's order of the thirty-firſt of May, ſince the granting of the ſaid warrants, amounting to 29459 Guilders 19 Stivers.

Sinking under the diſtreſſes in which they were involved by the delays of office, Meſſ. Bordelius, Delius, and Co. obtained, by repeated and earneſt ſolicitations, an order from the Lords of the Treaſury on the twenty-ſixth of June 1764, to the Commiſſioners, requiring them to take into their conſideration, whether it was proper that the two warrants in queſtion ſhould be returned to the claimants or not: in conſequence of which order the Commiſſioners did on the tenth of October following, make a report to their lordſhips; in which, after ſtating the ſeveral contracts, and orders upon which Meſſ. Bordelius, Delius, and Co. had made the deliveries ſpecified in the certificates, upon which theſe two warrants were granted; and alſo the reaſons which had induced Colonel Pownal to ſtop the payment of them; they declared their opinion "that the warrants "ought to be reſtored to the claimants; "and that whatever charge in them ſhould "be found in the certificates annexed to "them to be for deliveries made at Coes-"feldt, ought to be deducted therefrom," without paying any regard to the teſtimonies of Sprenger and Berg, herein before

ſet

ſet forth, or of Mr. Charles Gottlieb Wolter, and Mr. Chriſtian Kahlbut, inhabitants of Sparrenberg, two men of fair character, and totally diſintereſted in the event of this affair, who ſwore poſitively and expreſly, "that they had heard Hagedorn with the ſtrongeſt appearance of ſincerity and truth, retract every article of his charge againſt Sprenger (the ſub-deliverer of Meſſ. Bordelius, Delius, and Co.) and profeſs the deepeſt remorſe for ſo black a crime, to which he ſaid he was ſtimulated by hopes given him of receiving a conſiderable reward for the detection of any fraud committed in the deliveries of Meſſ. Bordelius, Delius, and Co. confirming at the ſame time the teſtimony of Sprenger, in reſpect to the aſſiſtance he had given in the conduct of the magazine, and owning that without it, he ſhould never have been able to carry it on, but muſt have ran away and left it in confuſion," &c.---Which teſtimony, dated the twelfth of July 1764, and regularly authenticated by the magiſtrates before whom it was ſworn, had been obtained by Mr. Bordelius, on his going to Sparrenberg to ſeek for Hagedorn,

dorn, in order to bring him to juſtice; but he had fled from thence for various crimes, nor was it known what was become of him.

The report of the Commiſſioners, I ſay, was made without regard to theſe teſtimonies, and in direct oppoſition to the opinion of his majeſty's then Attorney-general, the officer appointed to tranſact the law-buſineſs of the crown, which the claimants had applied for, as their beſt direction in a matter to them of ſuch importance, and laid before the Commiſſioners, as the beſt ſupport *in law*, to a cauſe which *in juſtice* wanted no ſupport, referring to the ſaid opinion of the Attorney-general as annexed, together with a ſtate of their reaſons for diſſenting from it; but neither has this opinion been reſtored to the claimants along with their papers, though confeſſedly procured by them at an expence to themſelves, nor have the reaſons on which the Commiſſioners grounded their diſſent from it, been communicated to them.

In conformity with their opinion in this report, the Commiſſioners, on examining the accounts annexed to the certificates

upon which theſe two warrants had been granted, reported, on the twenty-fourth of December following, " that the ſaid war-
" rants for 121,002 Guilders 7 Stivers
" were duly and officially granted; but
" that the ſum of 12912 Guilders 4 Stivers
" was certified, in conſequence of deli-
" veries made by Meſſ. Bordelius, Delius,
" and Co. at Coesfeldt, and therefore ought
" to be deducted therefrom."

And purſuant to the principles laid down in this report, they made another on the twenty-ninth of December following, by which they actually did deduct the ſum of 12912 Guilders 4 Stivers from the ſaid warrants, as having been certified in conſequence of deliveries made by Meſſ. Bordelius, Delius, and Co. at Coesfeldt, and reported the reſidue of the warrants for payment.

Upon this report, a warrant was accordingly iſſued by the Lords of the Treaſury, on the twenty-fourth of January 1765, for the payment of the reſidue of theſe two warrants, after deducting the ſaid ſum of 12912 Guilders 4 Stivers; in which warrant it is to be obſerved, that no mention is made of the information of

Hagedorn, nor of this deduction in conſequence of it; the ſum ordered to be paid, being barely ſaid to be *in ſatisfaction of theſe two former warrants*, without any other reaſon being given for their having remained unpaid ſo long as from April 1762, to January 1765, beſide that originally given by Mr. Taylor, the Deputy Paymaſter-general, viz. *the diſcontinuance of the remittance of money to the ſaid Paymaſter*, though payment of the ſaid warrants had been often and earneſtly ſollicited in England for two years before; a circumſtance upon which it is not neceſſary to make any remarks.

The inſufficiency of the reaſons upon which this report is founded, is moſt evident. The accounts of the deliveries, in payment for which theſe warrants were granted, were proved by proper vouchers; they were certified by the proper officer; and on his certificates the warrants were duly and officially granted; and all this not only before the accuſation of Hagedorn was made, but alſo before the frauds charged in that accuſation, are alleged to have been committed. The affair therefore, ſo far as relates to the deliveries in-

cluded in theſe warrants was finiſhed, nor could any fraud, committed after, affect them; as in the ſame contract in which was the penal clauſe of forfeiture in caſe of fraud, there was a prior one, by which payment was expreſly promiſed, as ſoon as juſt and valid receipts for deliveries to a much leſs amount than thoſe contained in the certificates upon which theſe warrants were granted, ſhould be produced. Had this clauſe therefore been fulfilled, the contractors would have been out of reach of this accuſation, as to theſe warrants! For the Commiſſariate, therefore, to make uſe of their own breach of contract, as a means for making the contractors pay the penalty of a ſubſequent one, (however juſtly proved) is equally contrary to the invariable principles of equity, and of that law, in which it is a maxim, that *no man ſhall take advantage of his own act of injuſtice.*

For theſe plain and inconteſtible reaſons, the ſaid Meſſ. Bordelius, Delius, and Co. have an indiſputably juſt right to payment of the ſum of 12912 Guilders 4 Stivers, deducted from theſe two warrants, even if the accuſation upon which that deduction was made, had been ſupported by ſufficient proof; whereas,

whereas, on the contrary, it is deſtitute of every colour of proof requiſite to gain credit.

Nor is the payment of this ſum, thus arbitrarily deducted from theſe warrants, the only demand which the proprietors have upon the crown of Great Britain, on account of them. They are alſo entitled, by every principle of juſtice and law, to intereſt upon the amount of theſe warrants, from the day when they were preſented for payment, to the day of their being paid. This is ſo evident to common ſenſe, ſo conſonant to the conſtant courſe and practice in buſineſs, that it can require no proof. A warrant for payment of public money is exactly of the ſame nature, and within the ſame rules of law, as a private perſon's draught upon a banker, upon the refuſal of payment of which intereſt is always recovered againſt the drawer.

A demand was accordingly made of intereſt for the amount of theſe two warants, from the day of their having been preſented to the Deputy Pay-maſter; which demand was rejected by the Commiſſioners, "as "not founded upon any authority, agree-"ment, ſtipulation, treaty, or accord, of

" the Commiſſariate, to make it a charge " againſt the crown of Great Britain," &c.

The reaſon given for this rejection is equally inſulting to equity and reaſon: it is playing upon words to elude juſtice! The agreement of the Commiſſariate was to make immediate payment; how then ſhould they agree to pay intereſt on the delay of that payment? The very ſuppoſition of ſuch a delay would have obviated their power to make any agreement, as by ſuch immediate payment only, the contractors could propoſe to perform their agreements. But when this delay did happen, the omiſſion of an expreſs ſtipulation for intereſt could not take away the right of it. *Quod neceſſario intelligitur non deeſt.* A neceſſary conſequence need not be expreſſed.

As the right of the claimants, therefore, to the warrants is admitted by the Commiſſioners themſelves, and as the reaſon given for ſtopping payment of them is proved to have been without foundation, the ſaid claimants have alſo an indiſputably juſt right to intereſt upon them, while that payment was ſtopped.

Though the diſappointment of receiving punctual payments, for the above-mentioned

tioned warrants, involved Meſſ. Bordelius, Delius, and Co. in great difficulties; they were not deterred by it from proceeding to fulfil the reſidue of their contracts, as they expected, from day to day, that the want of money, *the ſole reaſon given for that diſappointment*, would be removed by the arrival of the remittances from England, and knew how detrimental a diſcontinuance muſt be to the ſervice, at ſuch a critical time.

Among other deliveries made by them on this occaſion, they delivered into the King's magazine at Coesfeldt, from the twenty-eighth of May to the twenty-firſt of June, incluſive, 24,211 rations of oats, 30,389 rations of hay, and 39,355 rations of ſtraw, amounting to 20459 Guilders 19 Stivers, in conſequence of an order given by Mr. Halſey, on the ſixth of March 1762, and of the order of Mr. Elliot of the thirty-firſt of May following, for which they took the receipts of the King's magazine-keepers, Hagedorn and Croeſchal, the proper officers to receive them.

When they carried theſe receipts, among others for deliveries made at other places, to the proper office to be ſettled, they

were ſurprized to find an objection made to them on account of the accuſation of Hagedorn, mentioned in the foregoing article, for the frauds charged, in which the whole were alledged to be forfeited to the King, in conſequence of the clauſe to that purpoſe, in the contract of the firſt of November 1761.

The ſteps taken upon this occaſion, by thoſe who had it in their power to take what ſteps they pleaſed, have been already ſufficiently explained.

On this demand of 20,459 Guilders 19 Stivers, the Commiſſioners reported on the twenty-fourth of November 1764, "that "it ought not to be paid, in conſequence "of their report on the tenth of October "next preceding; in which they were of "opinion, for the reaſons therein given, "that the forage delivered on account of "this partnerſhip at Coesfeldt, ought to "be confiſcated."

Though Hagedorn's accuſation has been ſhewn in the foregoing recital, not only to want every ſupport of proof, but alſo to refute itſelf; yet as this report is reſted ſolely on the credit of it, it may not be improper to take a ſhort view of ſome of the moſt ſtriking

ſtriking circumſtances of that moſt extraordinary affair.

The information of Hagedorn depends on his ſingle oath, unſupported by any other proof. It opens with an acknowledgement of his having falſified the date of a report which he had delivered to Mr. Maſon, at whoſe requiſition he made the information.---It is profeſſedly made to ſhift off the crime of embezzlement, by owning another crime, the penalty incurred for which, by the accomplices he charged, he expected to lighten the puniſhment of his own guilt.---It alledges a motive for this crime, the baſeneſs of which proves the man capable of being influenced by it, to be deſtitute of every principle of virtue, and therefore utterly unworthy of credit.---It contradicts itſelf, and convicts the informer of direct perjury, to the expreſs knowledge of Mr. Maſon, at whoſe requiſition, and in whoſe preſence it is made, by aſſerting that he had really delivered his report to Mr. Maſon, on that very day at Munſter—and it is ſworn by two men of unblemiſhed repute, and abſolutely diſintereſted in the affair, to have been expreſly and totally retracted by him, on finding himſelf juſtly

diſappointed in the baſe views for which he made it.

As the reaſons therefore given for the confiſcation of this demand are utterly deſtitute of foundation, the claimants have an indiſputably juſt right to payment of it, amounting, as above, to 20459 Guilders and 19 Stivers.

State

State of the Demands of Meſſ. Bordelius, Delius, and Co. upon the Crown of Great Britain, for Forage delivered into the King's Magazines at Lipſtadt, for the Uſe of the Britiſh combined Army in Germany.

PURSUANT to their contract of the twelfth of September 1761, (ſet forth in the foregoing State, p. 1.) Meſſ. Bordelius, Delius, and Co. made, within the limited time, the ſtipulated deliveries at Lipſtadt; in the courſe of which their agent, Mr. Henrickſon, received from Mr. G. C. Frederick, the King's magazine-keeper there, a receipt for 8664 rations of oats, and 15151 rations of ſtraw, dated on the twenty-ſixth of November 1761; which receipt was regularly preſented to the Control; but the ſettlement of it could never be obtained, in conſequence of the general ſtop put to ſettling their accounts, by the Commiſſioners of Enquiry, on the allegation of frauds in the deliveries at Coesfeldt; the injuſtice of which allegation has been proved in the preceding State.

On

On this receipt, the Commiſſioners for German Demands made the following report.

—" In ſupport of the demand for forage " delivered into the magazine at Lipſtadt, " amounting to 4656 Guilders and 7 Sti- " vers, there is produced an original con- " tract, bearing date the twelfth of Sep- " tember 1761, between Mr. Halſey, and " Delius and Co. wherein the latter en- " gage, on their part, to deliver into the " magazines of Munſter, Oſnabrug, and " Lipſtadt, 300,000 complete rations, " which the ſaid Mr. Halſey promiſed on " the part of the Commiſſariate, to cauſe to " be paid for, at the rate of 15 Stivers, " Holland currency, for each complete ra- " tion, viz. the ration of oats 9 Stivers, the " ration of hay 5 Stivers, and the ration of " ſtraw one Stiver.

" We thereupon examined a general re- " ceipt, produced as the voucher of a de- " livery made in conſequence of the ſaid " contract, ſigned by G. C. Frederick, the " magazine-keeper at Lipſtadt, on the " twenty-ſixth of November 1761, for " 8664 rations of oats, and 15151 rations " of ſtraw; which being charged at the

" prices

" prices fixed in the contract for these ar-
" ticles, do amount to above the sum of
" 4656 Guilders and 7 Stivers, Holland
" currency.

" But we must beg leave here to observe,
" that the said magazine-keeper, Frederick,
" was, on the twenty-fifth day of the said
" month of November 1761, seized and
" arrested, together with all his papers,
" by order of Colonel Peirson, as appears
" by a minute made thereof, by the Com-
" missioners of Enquiry; and as we ap-
" prehend this man's authority to give re-
" ceipts was at an end, we cannot in this
" case consider the said receipts as a suffi-
" cient and valid voucher, and therefore
" are of opinion, that the said charge
" ought not to be paid."

In order to form a proper judgment of this report, it will be necessary to recite some circumstances which immediately preceded the publication of it, and lead to a solution of the objection upon which it is founded.

On the second of May 1765, Mr. Peter Ernst Delius, who had come to London to solicit the settlement of his accounts, received notice to attend the Commissioners directly,

directly, which he accordingly did; and on being required to explain the circumſtance of the date of this receipt, declared himſelf unable to do it, being utterly unconſcious of the fact, but requeſted the Commiſſioners would defer making their report till he could have anſwers from his partners in Germany, to whom he would write directly, and was under no apprehenſion but he ſhould receive ſuch an explanation of it from them, who were upon the ſpot, as ſhould be ſatisfactory; being convinced that there was no circumſtance in his affairs, that would not bear the ſtricteſt examination; with which requeſt the Commiſſioners promiſed to comply.

Accordingly Mr. Delius wrote that very night to Bielfeld, to Mr. Brockman, one of his partners, to acquaint him with the objection made to this receipt, and deſire his aſſiſtance to remove it, who directly wrote to Ham, to Mr. Henrickſon the agent before-mentioned, who had made the deliveries at Lipſtadt, and taken this receipt from Mr. Frederick, the magazine-keeper; and alſo to the ſaid Mr. Frederick, at Frankenfeld, whoſe anſwers, (which the writers are ready to confirm by oath) as

as far as they reſpect this point, are in the following words:

—*Copy of Mr. Henrickſon's Letter, dated at Ham, May* 16, 1765.

—" I remember very well, that when " Mr. Frederick was arreſted, I heard " of it the very day, at Bockum. I had " then the *interim* receipts, but they were " but little ſlips of paper; and I made as " much haſte as I could to Lipſtadt, but " could not get within the gate that even- " ing. The next day, when I came there, " the guard he was kept by, would not " admit me to him; but after having " made my repreſentation to the officer, " and ſhewing him what I came about, I " got in his preſence admitted to him, and " Mr. Frederick gave me the receipt, " which the officer peruſed. What be- " came of the *interim* receipts I do not re- " collect. This is all that I can recollect " about it; and I believe Mr. Frederick " would have dated it the 25th, if I had " inſiſted upon it. I am ſorry you have " ſo much trouble about it; but I am of " opinion that the Engliſh will eaſily per- " ceive the injuſtice of this affair."

—*Copy of Mr. Frederick's Letter, dated at Frankenfeld, May* 30, 1765.

— " By your letter of the 16th inſtant " I am informed, that the honorable com- " miſſion in England make an objection " againſt a magazine-receipt given to you, " by me, the 26th of November 1761, " becauſe I had dated it the day after my " being arreſted, and that it was therefore " of no value.

" Though I am aſtoniſhed at ſuch an ob- " jection, and every one who has a true " idea of magazine-tranſactions will ſee, " *and my accounts ſhew*, that the forage, " for which I gave the receipt, was not " delivered in the magazine the 26th, but " at ſundry times before, by one of the " ſub-contractors (whoſe name I cannot " recollect), I will, for clearing up the " matter, only ſay, that I ſtill remember " that one of the ſub-contractors, or agents, " came to me with an officer, the day af- " ter I was arreſted, and delivered to me, " the *interim* receipts, which were given " by the proviant-ſchreiber, at the delivery " of the forage, for which he demanded a " general receipt; it was my duty to give

it

" it him, becauſe the forage was delivered
" into the magazine in my time; and ſo I
" gave it him, as uſual, in the preſence of
" the officer, (taking back the *interim* re-
" ceipts) dated that day; and I could not
" give it him ſooner than that day, on which
" the *interim* receipts were delivered to me.

" This is all that I can ſay upon this
" ſubject, and I don't doubt, but as all the
" receipts iſſued for forage muſt correſpond
" and tally with my accounts, the ho-
" nourable Commiſſioners neither can, nor
" will form any doubt or objection to the
" rectitude of the ſame."

To this plain account it is unneceſſary to add any thing more, than an explanation of what is meant by *interim* receipts, to remove every ſhadow of doubt of the juſtice and validity of the receipts in queſtion. *Interim* receipts are ſhort receipts, or rather memorandums of particulars, given either by the magazine-keeper, or one of his aſſiſtants, on the delivery of every parcel, or ſeparate quantity, to ſerve as vouchers, *(interim, in the mean time)* till a general receipt can be given, when they are taken up.

On receipt of theſe letters, the ſaid Mr. Delius directly attended the Commiſſioners with them, when, to his utter aſtoniſhment, he was informed, that (notwithſtanding the promiſe made to him to wait till he could have anſwers from Germany) the report above-recited had been made, by which this demand was rejected.

The injuſtice of this proceeding is moſt evident! That Mr. Delius was guilty of no delay, which could give colour for ſuch a breach of promiſe, will appear from the date of his letter, and thoſe of his correſpondents. He was ſummoned to attend the Commiſſioners on the ſecond of May. —His letter to Mr. Brockman bears date that very day. — Mr. Brockman's anſwer is dated the twentieth of May, in which is incloſed the anſwer of Mr. Henrickſon, dated at Ham, the ſixteenth of May;—and Mr. Frederick's is dated the thirtieth, at Frankfeld in Hanover, from whence it was firſt ſent to Mr. Brockman at Bielfield, and by him tranſmitted to Mr. Delius in London, who did not receive it till the third of July, when he

he attended to have laid it before the Commiſſioners, but found that their report had been ſigned on the twenty-firſt of June.

Now as the ſaid Mr. Delius was under an indiſpenſible neceſſity of waiting for this letter from Mr. Frederick, from which he expected the explanation required of him, and as the whole time from the ſecond of May, when the ſaid explanation was required, till the beginning of July, when he attended with theſe letters, was not more than ſufficient to ſeek for information from different people, in different and diſtant places, there certainly could be no reaſon to ſuſpect him of delaying by deſign, that could juſtify ſigning the report ſo precipitately, even had there been no promiſe to the contrary given, much leſs againſt an expreſs promiſe.

As to the objection itſelf, this recital of the circumſtances of it totally takes away its force. For though the magazine-keeper's being arreſted neceſſarily put a ſtop to his further receiving of forage, it by no means incapacitated him to give re-

ceipts for forage already received by him, (which no other perſon could give), nor invalidated the ſaid receipts when found to agree with the regular entries in his accounts, made before he was arreſted; eſpecially as he was ſoon after ſo fully acquitted of the charge upon which he was arreſted, that he was reſtored to his former employment, and continued in it to the end of the war, it being *conviction*, and not *accuſation*, that deſtroys *moral* character, and cauſes *civil* incapacity; and this the Commiſſioners themſelves acknowledged, when the circumſtances were laid before them, and profeſſed concern, that they had not known them before their report was made.

As, therefore, there is no doubt even inſinuated of the actual delivery of the forage, for which this receipt was given!---As the report, which rejects it, is founded ſolely on a bare *apprehenſion* of informality, which the Commiſſioners would not give time for removing!---And as the circumſtance that raiſed that apprehenſion is thus fully and ſatisfactorily cleared up, and the apprehenſion conſequently removed,

moved, the ſaid Meſſ. Bordelius, Delius, and Co. have an indiſputably juſt right to payment of this demand, amounting, as above, to 4656 Guilders and 7 Stivers.

State of Demands of Meſſ. Bordelius, Delius, and Co. upon the Crown of Great Britain, for Oats, Rye, Sacks, and Hay, which had been collected in their Depots at Meppen and Dullmen, in the Biſhopric of Munſter, for fulfilling their Contracts with the Britiſh Commiſſariate, and were taken and deſtroyed by the Enemy.

IN order to fulfil their contracts of September 12, and November 1, 1761, *(ſee* p. 1. *and* 2. *here immediately preceding)* Meſſ. Bordelius, Delius, and Co. were obliged to make large depots, at Meppen, on the river Ems, in the biſhopric of Munſter, there being no place left to ſupply the army, and particularly that part of it under the command of his Serene Highneſs the Hereditary Prince of Brunſwick, with oats and rye, but Holland and Eaſt Frieſland, nor any way left to bring them from thence to the magazines at Munſter, Oſnaburg, and Lipſtadt, but by land-carriage from the frontiers of

Holland, or by water, on the Ems; the navigation of which river is always uncertain, and very rarely practicable any farther than Meppen.

As all the veſſels on the Ems were under the direction of the Commiſſariate, the ſaid Meſſ. Bordelius, Delius, and Co. applied ſeveral times for a ſufficient number of them to tranſport their forage to Meppen; as they did afterwards for carriages to remove it from thence to the King's magazines, but in vain, it not being in the power of the Commiſſariate to furniſh them according to their engagement; the more immediately indiſpenſible ſervices of the army requiring all that could be had, as was atteſted by Mr. Commiſſary Halſey.

On the twenty-ninth of June 1762, Mr. Siebrun, burgher of Meppen, who had the care of the depots of the ſaid Meſſ. Bordelius, Delius, and Co. there, perceiving that the French army advanced that way, applied to Mr. Berning, Notary Public, to ſurvey the depots, and give him an authentic certificate of the quantities of grain then in them, which he accordingly did in the preſence of the ſaid Mr. Siebrun, and Mr. Godfrey Frankendahl, another burgher of Meppen, and joined with Mr. Siebrun in the care of the

ſaid depots; who, the ſaid Siebrun and Frankendahl, did, on the ſame day, the twenty-ninth of June, make affidavits before Mr. R. Mulert, judge of the dutchy of Munſter, Meppen, and Haarem, of the ſaid particular quantities, which by the aforeſaid certificates, and their affidavits, appears to have amounted to 77 laſts, and 58 vierlops of oats, contained in 1216 ſacks, and 4½ laſts of rye; copies of which affidavits and certificates were ſent to Mr. Maſon, one of the Commiſſaries of Control, then at Munſter, with a requiſition either to aſſiſt them immediately with the neceſſary carriages to tranſport their ſtores, or to order one of the King's magazine-keepers to examine them.

The firſt being impoſſible, Mr. Maſon ſent an order to Mr. Ruſſel, King's magazine-keeper and inſpector, then at Meppen, to examine the ſaid depots, which he did, and made a report accordingly to Mr. Maſon.

As had been apprehended, the French troops took, uſed, ſold, and deſtroyed the whole of the ſtores aforeſaid, on the ſeventh and tenth days of July next after they had been examined; of which fact Mr. Otto

Otto Siebrun, and Mr. Godfrey Frankendahl, before-mentioned, made regular affidavits, before John Henry Morrien, doctor of law for the dutchy of Munſter, and judge of the city of Meppen, on the twenty-firſt of July next following; and to obviate every poſſible objection, on the ſixteenth of September, as ſoon as the French troops retired, at the requiſition of Meſſ. Bordelius, Delius, and Co. Mr. Henry Ruſſel, the King's magazine-keeper and inſpector, who had examined their depots by the order of Mr. Commiſſary Maſon, as mentioned above, made a regular atteſtation before a Notary Public at Meppen, " that the " quantity of grain in their ſtores on the " twenty-ninth of June, when he had ex- " amined them, amounted to 77 laſts and " 58 vierlops of oats, contained in 1216 " ſacks, and 4½ laſts of rye, agreeable to " the ſpecification or liſt thereof, delivered " by Mr. Siebrun aforeſaid;" as alſo " that " he had ſent his report to the Commiſſa- " riate;" and, " that the ſaid Mr. Siebrun " had made ſeveral applications to him for " carriages, in order to get the ſtores pro- " vided, tranſported to the magazines, " where they were to be delivered; but

" that he, (the ſaid inſpector) could not " grant them for want of the neceſſary " orders from the Commiſſariate, which " he knew to be the reaſon of the ſaid " ſtores being left there till the arrival of " the French; whom, upon proper enquiry " afterwards, he found to have taken, uſed, " ſold, and deſtroyed the ſame, as he " ſafely could, and thereby did atteſt, and " was ready to make oath, if required."

Beſides the above oats, rye, and ſacks, taken by the French at Meppen, they alſo took on or about the ſame time, 3000 rations of hay, belonging to Meſſ. Bordelius, Delius, and Co. at Dullmen in the biſhopric of Munſter, which had been collected there in order to fulfil the ſame contracts of the twelfth of September, and the firſt of November, 1761: as was atteſted on the twenty-third of July following, by the Baillieve, burgo-maſter, and council of Dullmen, on the declaration of Mr. Walter, who had the care thereof, for the ſaid Meſſ. Bordelius, Delius, and Co.

The amount of the loſs ſuſtained by Meſſ. Bordelius, Delius, and Co. by the taking of the ſaid oats, ſacks, rye, and hay, which loſs the Commiſſariate was engaged by

by contract to make good to them, is as follows.

At Meppen.

	Holland currency Guilders.	Stiv.
For 77 lasts and 58 vierlops of oats (making 22451 rations, at 281 rations per last) at 9 Stivers per ration.	10105	13
This being the price contracted for on delivery at Munster, there is to be deducted the expence of carriage from Meppen to Munster, being 9 miles, which at 2½ Marien-gros per quintal, and each last making 20 quintals, amounts to	77	13
	10028	0
—1216 sacks, at 16 Stivers per sack	972	16
4½ lasts of rye, at 35 ducats per last, the price contracted	826	17
	11827	13

At Dullmen.

—3000 rations of hay, at 5 Stivers per ration	750	0
	12577	13

The cauſeleſs ſtop put by the Commiſſioners of Enquiry to ſettling the accounts of Meſſ. Bordelius, Delius, and Co. in Germany, (as hath been ſhewn before) obliged them to bring this demand over to London, to be liquidated by the Commiſſioners appointed here, who on the twenty-ſixth of June 1765, made the following report thereon to the Lords of the Treaſury.

" Having examined the contracts under " which the forage, rye, and ſacks are " pretended to have been deſtined to be " delivered into his Majeſty's magazines, " and likewiſe the proofs that the ſeveral " articles were taken, or deſtroyed by the " enemy, we find that the forage and ſacks " in queſtion, in terms of the reſpective " contracts, ſhould have been delivered " into the magazines ſome months before " the loſs is ſaid to have happened; and " we obſerve in particular, that $4\frac{1}{2}$ laſts of " rye, ſaid to be loſt in Meppen, ſhould " have been, according to the contract, de- " livered into the magazine in that place, " which trifling circumſtance cannot fail " to impreſs us with a ſuſpicion of the " claimants intention to defraud.

" We

" We alſo find that the proofs for the " loſs, conſiſting of protocols, are *vague*, " *ex parte*, and *inſufficient*, and, in our opi- " nion, as not amounting to an ade- " quate proof, cannot be admitted to fix " this as a juſt demand againſt the crown, " and therefore do report, that this demand, " amounting to above, as 12577 Guilders, " Holland currency, *ought not to be paid.*"

The injuſtice of this report evidently appears from the recital here before given of the loſs, the reaſon of that loſs, and the proofs of it, which are as full and demonſtrative as the nature of ſuch a caſe can admit. That the oats, ſacks, and rye, alledged to have been loſt, were actually in the depots of the claimants at Meppen, at the time, is proved by the certificate of the Notary Public; by the affidavits of two credible and competent witneſſes, Siebrun and Frankendahl, made before the grain and ſacks were taken; and by the atteſtation of the King's magazine-keeper, who had been ordered by the Commiſſariate, at the requiſition of the ſaid claimants, to examine them.---That they were actually taken, and totally uſed, ſold, or deſtroyed by the French, appears from the affidavits of two credible and competent witneſſes,

witneſſes, Siebrun and Frankendahl, made at the very inſtant, and on the ſpot, when they muſt have been detected had they attempted the leaſt falſehood in a matter known to the perſon before whom the affidavits were ſworn, and every one in the place.

That the reaſon why theſe oats, ſacks, and rye were not delivered into the magazines, was the failure of the Commiſſariate to ſupply the carriages and veſſels neceſſary for tranſporting them thither, according to their contract; and that the ſaid carriages had been repeatedly demanded, appears from the atteſtation of the Inſpector from whom they had been demanded; and beyond a poſſibility of contradiction or doubt, from the atteſtation of Mr. Commiſſary Halſey.

Are theſe proofs *vague?* Are they *ex parte?* Are they *inſufficient?* Would the nature of the caſe admit of any ſtronger, more clear, and convincing? Or, could the claimants poſſibly have acted in any manner that could have acquitted them more fully from fraudulent deſign?

It is further to be obſerved, in anſwer to the objection, "that theſe articles ſhould "have

" have been delivered into the magazines be-
" fore that time," that in the contract of the first of November, no time is limited for fulfilling, becauſe experience had convinced the Commiſſariate that any delay muſt proceed from themſelves, in not ſupplying carriages, which really was the reaſon for that contract's being left in blank.---May not the articles loſt, therefore, be ſuppoſed to have been deſtined for fulfilling this contract, as well as that of the twelfth of September, in which a time was limited? And will not that anſwer remove ſuch an objection? The truth of the caſe was, both contracts were fulfilling at the ſame time, and therefore the claimants thought it not neceſſary to make any diſtinction between them in the foundation of their demand, as it was impoſſible to foreſee that ſuch an abſurd objection would be made.

That the Commiſſioners themſelves looked upon theſe two contracts, as conſolidated, appears by their ſubjecting the deliveries made under the former to the clauſe of forfeiture in the latter, in their rejection of the deliveries at Coesfeldt! Ought they not therefore, in common honeſty to have alſo applied the unlimited time of the latter to the former? To

To the loſs of the $4\frac{1}{2}$ laſts of rye, it is objected, " that as they ought to have " been delivered into the magazine at " Meppen, their being alledged to have " been taken there undelivered, impreſſes " a ſuſpicion of an intention to defraud." But the leaſt enquiry into the reaſon of their not being delivered, would have removed this ſuſpicion, which really is as trifling as the circumſtance upon which it is founded is confeſſed to be.

On the fifteenth of May 1761, a contract was made between Mr. Commiſſary Halſey and Mr. P. E. Delius, by which the latter engaged to deliver into the magazines at Halte and Meppen, 800 laſts of good and merchantable rye, for which he was to be paid at the rate of 35 ducats in gold for each laſt, &c.

To fulfil this contract, the ſaid quantity of rye was brought to Meppen, by the ſaid Delius, and Co. and the deliveries made accordingly, till the Commiſſariate put a ſtop to them; by which means theſe $4\frac{1}{2}$ laſts of rye lay there ready to be delivered whenever the Commiſſariate ſhould order them to be received.

This

This ſhort account of that circumſtance will remove any ſuſpicion which it could raiſe. That this account was not given, along with the demand, nor atteſted in the ſame manner as the former, was becauſe the claimants thought, when they made the demand, that it would have been ſettled in Germany, where the fact was known, and where it was the cuſtom (as in juſtice it ought to be every where) to examine them perſonally, and give them an opportunity of clearing up any difficulty that might appear.

In reality this inaccuracy, inſtead of impreſſing, ought to obviate every ſuſpicion of an intention in the claimants to defraud. Frauds are always planed with care, to avoid every objection; but here every thing is produced, juſt as it is, without reſerve or caution. The reality of the loſs is proved, and they thought of nothing farther.

But ſhould this *really trifling* circumſtance raiſe a ſuſpicion; was it juſt to reject for that ſuſpicion, the former part of the demand, which is totally diſtinct from it, and againſt which it was impoſſible for any ſuſpicion to ariſe?---Was it juſt to reject even the part againſt which it aroſe,

without enquiring into the foundation of it?

The ſame reaſoning holds in reſpect to the hay loſt at Dullmen. That it was loſt, appears indiſputably by the certificate of the baillieve, burgo-maſter, and council of Dullmen. On this evidence a demand was made for it; but that demand is ſubmitted implicitly to diſcretion, becauſe the proof of the quantity is acknowledged to be *inſufficient*; and all other proofs, which were ſufficient, have been loſt in the hurry and confuſion impoſſible to be avoided on ſuch occaſions. But is this inſufficiency in the proof of one demand a juſt reaſon for rejecting another, where the proof is fully ſufficient?—And does not the leaving this demand thus unſupported, prove that there was no intention to defraud?

As the reaſons therefore given for rejecting that part of this demand, which relates to the loſs at Meppen, are evidently without foundation, the claimants have an indiſputably juſt right to payment of it.

State

State of the Demands of Meſſ. Bordelius, Delius, and Co. upon the Crown of Great Britain, for Sacks delivered into the King's Magazines at Oldenſael, for the Uſe and Service of the Britiſh combined Army.

IN the beginning of the year 1762, Duke Ferdinand ordered all the magazines to be tranſported with all poſſible expedition to Munſter, to be more convenient for the ſupport of the army, which he had formed the reſolution of drawing together very early, in order to relieve the country of Heſſe Caſſel.

In the midſt of this hurry, Mr. Ricke, the King's magazine-keeper at Oldenſael, having obtained carriages, but falling ſhort of ſacks, without which it was impoſſible for him to fulfil his orders, applied to the agent of Meſſ. Bordelius, Delius, and Co. and repreſenting the diſtreſs he was in, and the diſadvantage it would be to the ſervice to let the carriages go away empty, at ſuch a critical time, as it would be impoſſible

for him to get them together again; the ſaid agent knowing it to be the inclination of his principals to aſſiſt the ſervice by all means in their power, let him have 6000 oat-ſacks, taking his receipt for them, dated the twenty-ninth of April 1762.

And on the thirtieth of May following, on the delivery of 96 laſts of rye, by the ſaid Meſſ. Bordelius, Delius, and Co. into the ſaid magazine at Oldenſael, the ſame magazine-keeper, Ricke, being ſtill in want of ſacks, obtained from them 2304 rye-ſacks, for which he alſo gave a receipt, of that date; the receipt of both which numbers of ſacks he entered regularly in his magazine-accounts and reports made at the time to the Commiſſariate, which accounts and reports were given to the Commiſſioners for their direction and aſſiſtance, and would have ſhewn the juſtice of this demand, had they been properly examined.

For theſe ſacks the ſaid Meſſ. Bordelius, Delius, and Co. charged as follows:

For

	Guil.	Stiv.
For 6000 oat-ſacks, at 14 Stivers,	4200	0
—2304 rye-ſacks, at 16 Stivers, being the price agreed for with Mr. Commiſſary Elliot, for ſacks received from Meſſ. Bordelius, Delius, and Co. about the ſame time at Meppen,	1843	4
Guilders	6043	4

In conſequence of the cauſeleſs ſtop put to the ſettlement of the accounts of Meſſ. Bordelius, Delius, and Co. in Germany, by the Commiſſioners of Enquiry, this demand came before the Commiſſioners in London, who, on the twelfth of December 1764, reported thereon to the Lords of the Treaſury,

—" That as they found the delivery " was made on a pretended verbal order, " given by William Naſſaw Elliot, eſq. " and only proved by the allegation of a " perſon intereſted in the demand, it could " not be conſidered as a ſufficient founda- " tion, for any delivery made in conſe- " quence to be brought as a charge againſt " the crown of Great Britain—and were of

" opinion that this demand (for want of " proper authority) ought not to be " paid."—

The inaccuracy of this report, and conſequently the injuſtice of the rejection of the demand is moſt evident. The ſacks were not delivered on a verbal order of Mr. Elliot, but on the requiſition of the magazine-keeper, in a caſe of evident and indiſpenſible neceſſity; and by the receipt of this magazine-keeper, who could be no way intereſted in the demand, vouched by the regular entries in his accounts, and by his regular reports made to the Commiſſariate at the time, the delivery is proved, and not by the allegation of any perſon; and upon this authority the demand of payment is founded: an authority from the nature of the caſe altogether unexceptionable; as the Commiſſioners themſelves thought, where it was in their favour, as appears by the following inſtance.

The ſub-deliverers of Mr. Roſe of Lipſtadt happening to fall ſhort of ſacks, in making their deliveries, applied without the knowledge even of their principal, to the King's magazine-keeper, who ſupplied them, and entered the ſacks in his accounts, in

in the ſame manner, as the receipts of theſe ſacks from Meſſ. Bordelius, Delius, and Co. had been entered.

When the Commiſſioners took into conſideration Mr. Roſe's demands, in which he had given no credit for theſe ſacks, his people having never acquainted him with their getting them, on finding an account of them in the magazine-keeper's reports, they deducted the value on the ſole proof of the ſaid reports, nor would liſten to his objecting that they had been obtained without any authority from him, or even his knowledge after.—Remarks on this proceding muſt be unneceſſary.

As the reaſons therefore given for the rejection of this demand are evidently without foundation, the claimants have an indiſputably juſt right to payment of it.

State of a Demand of Meſſ. Bordelius, Delius, and Co. upon the Crown of Great Britain, for Intereſt upon the Amount of a Warrant granted by Mr. Commiſſary-general Elliot, in Germany, for Payment for Forage delivered for the Uſe of the Britiſh combined Army; which Warrant had been ſtopped by the Commiſſioners of Enquiry, and was afterwards paid on their expreſs Acknowledgment of the right of the ſaid Meſſ. Bordelius, Delius, and Co. to receive ſuch Payment.

IN the courſe of fulfilling the contract of September 12th, 1761, *(ſee* p. 1. *here immediately preceding)* Meſſ. Bordelius, Delius, and Co. obtained from Mr. Commiſſary-general Elliot, a warrant upon a certificate of Mr. Commiſſary Higgins, for the payment of 18848 Guilders 19 Stivers, which they preſented regularly for payment to Peter Taylor eſq. Deputy Paymaſter; but he put them off, with an excuſe, "that he had no money at that time,

"but

" but expected remittances by General " Howard."

On the arrival of General Howard, the ſaid Meſſ. Bordelius, Delius, and Co. applied to him for payment of this warrant, who informed them of a charge laid againſt them by the Commiſſioners of Enquiry; in conſequence of which (all proofs of their innocence being ſet at naught!) they were obliged to depoſit this warrant, along with others, as a ſecurity for their anſwering any charge that ſhould be proved againſt them, in order to obtain payment of ſome part of their other unqueſtioned demands, to prevent the inſtant and utter ruin with which this general ſtoppage of their accounts threatened them, and their friends; nor could they ever prevail to have the affair ſettled, till it came before the Commiſſioners in London. (*See* p. 14. *here immediately preceding*.)

When the ſaid Commiſſioners took into conſideration the demands of Meſſ. Bordelius, Delius, and Co. they applied, by direction of the Lords of the Treaſury, to Mr. Cuthbert, who had been of the Commiſſion of Enquiry, to have the affair of this warrant cleared up; who, on the twenty-

twenty-ninth of June 1765, reported to their Lordſhips, *that this warrant ought to be returned* to the ſaid Meſſ. Bordelius, Delius, and Co. after reciting particularly all the circumſtances of its having been depoſited with the Commiſſioners of Enquiry, as herein before ſet forth; in conſequence of which report, the Commiſſioners for German demands, reported to their Lordſhips on the tenth of February 1766, " that " the ſaid warrant, and the certificate up- " on which it had been granted (which " had been delivered to them by the Com- " miſſioners of Enquiry, purſuant to their " report) had been duly and officially " granted; and that it did not appear to " them, that the ſaid certificate and war- " rant were the property of perſons ac- " cuſed, or ſuſpected of fraud, or upon " whom there was reaſon to believe the " public had any demand---and therefore " that the ſaid warrant ought to be paid." ---And accordingly his Majeſty's warrant was granted for the payment of it, on the twenty-ſeventh of March following.

But in this report the Commiſſioners utterly omitted to allow, or even take any notice of the intereſt demanded upon the ſaid warrant,

warrant, in conſequence of which omiſſion that intereſt was not paid.

The injuſtice of witholding this intereſt is moſt evident. By the ſigning of the firſt warrant of Mr. Elliot, the debt was aſcertained, and the creditors entitled to intereſt on the delay of paying that debt, by every principle of juſtice and law; as has been ſhewn in ſimilar inſtances *(ſee* p. 22. *here immediately preceding)*; and therefore the ſaid Meſſ. Bordelius, Delius, and Co. have an indiſputably juſt right to payment of intereſt for this warrant, amounting, at five per. cent. per ann. from the fourteenth of May 1762, when Mr. Elliot's warrant was ſigned, to the twenty-ſeventh of March 1766, when it was paid, to 3363 Rd. 3 Stivers.

STATE of the DEMANDS

OF

Meſſ. MEYER and DELIUS

UPON THE

CROWN of GREAT BRITAIN,

FOR

Forage collected by them at Bielfeld, to fulfil a Contract with the Britiſh Commiſſariate; and deſtroyed there by Order of his Serene Highneſs Prince Ferdinand of Brunſwick.

ON the twenty-fourth of February 1759, a contract was made by Mr. Intendant-general Hunter with Meſſ. Meyer, and Delius, by which the ſaid Meyer and Delius engaged to deliver into the King's magazines at Munſter, within the ſpace of ſix, or eight weeks, 200,000 complete rations of forage, *for account and riſque* of his ſaid Majeſty, and the uſe of the ſaid army, for which they were to be paid at the rate of 18 Mgr. for the complete ration, &c.

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In order to fulfil this contract, the ſaid Meſſ. Meyer and Delius directly collected the neceſſary quantities of forage, at Bielfeld, to be tranſported from thence to the King's magazine at Munſter.

As theſe tranſports could be performed only by the carriages of the country, and as the command and diſpoſal of thoſe carriages were always in the Britiſh Commiſſariate, the furniſhing of them was held to be an indiſpenſible article on the part of the Commiſſariate, in all contracts, whether expreſly mentioned or not; and accordingly Mr. Intendant-general Hunter gave the ſaid Meſſ. Meyer and Delius ſeveral orders to the magiſtracies for them, in the courſe of performing this contract.

But all theſe orders proved ineffectual, as appears by the atteſtation, upon oath, of P. F. Steitz, C. Menke, and J. F. Woermann, ſtore-keepers and deliverers to the ſaid Meſſ. Meyer and Delius, who had been often ſent to ſolicit for carriages, and were from their employment thoroughly acquainted with every circumſtance of the affair—by the certificate of Mr. Ebeling, ſecretary to Mr. Intendant-general Hunter, proving "that the ſaid Meſſ. Meyer and De-

"lius

" lius had often ſolicited for the carriages ne-
" ceſſary for making their deliveries, but that
" it was impoſſible for the Intendant-general
" to ſupply them at that time; and that their
" not fulfilling their contract within the li-
" mited time was occaſioned by this want
" of carriages."—And by the atteſtation of L.F. Alemann, ſecretary of the commiſſion of Ravenſberg, purporting that, " purſuant to
" the order of his Excellency, Mr. Maſſow,
" preſident of the chamber of war and do-
" mains of Minden, dated at Munſter the
" twenty-ſixth of February 1759, two or
" three thouſand waggons were agreed for
" and granted from the county of Ravenſ-
" berg, for tranſporting the forage pur-
" chaſed to ſtock the magazine at Munſter;
" but that although he did all in his power
" to cauſe the ſaid orders to be obeyed, and
" that number of waggons provided, yet
" ſo many extraordinary carriages happened
" to be wanting at the ſame time for the
" ſervice of the army, that the ſaid Meſſ.
" Meyer and Delius could not be ſupplied
" with carriages in the manner they had
" been granted to them, nor more than
" 314 could be gotten for them in the
" ſpace of ſeven weeks from the date of the

" ſaid orders, including ſome few which " they obtained afterwards."—

While they were ſtruggling with theſe difficulties, which had been ſuch as to prevent their fulfilling more than above half their contract, the head-quarters of the Britiſh army, upon their retreat out of the county of Heſſe, were fixed at Ritberg, within three German miles of Bielfeld, where the ſaid Meſſ. Meyer and Delius had 330 fodres of oats, and 4000 quintals of hay, remaining undelivered of what they had collected there to fulfil their contract.

On the army's coming ſo near, they applied again to Mr. Intendant-general Hunter, then at the head-quarters, for carriages to complete their deliveries, or elſe, orders how he would have the forage diſpoſed of otherwiſe; who returned for anſwer, by his ſecretary, Mr. Ebeling before-mentioned, " that the ſaid forage ſhould remain " at Bielfeld, to be ſerved there to the " troops"—as appears by the certificate of the ſaid ſecretary.

But while they waited in daily expectation of orders to this effect, they were ſerved with notice from Major Cronholm, commandant at Bielfeld aforeſaid, that he had

had received order from his Serene Highneſs Prince Ferdinand to deſtroy all the forage in ſtore there, in order to prevent its falling into the hands of the enemy, who were then advancing that way.

All that was poſſible for the ſaid Meſſ. Meyer and Delius to do, in ſuch circumſtances, was to apply to the burgo-maſter of the town, to examine their ſtores, that he might be able to give a proper atteſtation of the quantities of forage actually in them, when required; which was done accordingly, and the burgo-maſter found them to contain, according to the beſt of his judgment, it being impoſſible to take an exact account, in the midſt of ſuch a ſcene of tumult and confuſion, "about 330, "or 340 fodres of oats, each fodre con- "taining 40 Berlin ſheffells, and 4000 "quintals of hay, weighing 110 pounds "each quintal," as he atteſted ſeveral times afterwards upon oath, at the requiſition of the ſaid Meſſ. Meyer and Delius; as alſo "that the whole of this ſaid hay "and oats was given up to plunder, and "deſtroyed by Major Van Cronholm, on "the order of his Serene Highneſs Prince

" Ferdinand, and taken away by the ene-
" my, ſo that the ſaid Meſſ. Meyer and
" Delius neither did, nor could, ſave the
" leaſt part thereof;" all which circumſtances are alſo atteſted by the oaths of Mr. Helling, merchant of Scheildeſche, who had ſold a great part of the ſaid forage to the ſaid Meſſ. Meyer and Delius, expreſly for the intent and purpoſe of fulfilling this contract, and delivered it into their ſtores at Bielfield aforeſaid; of Mr. Frans Larentz Thicke, and of Mr. Carl Ludwig Schimdt, citizens of Herford, and Mr. Fredericke Saltpeter of the ſame place, in confirmation of the atteſtation of the ſaid Mr. Helling; in conſequence of their having delivered ſome parts of the ſaid forage for him, into the ſtores of the ſaid Meſſ. Meyer and Delius; all which atteſtations, duly ſworn before the proper magiſtrates, agree ſtrictly with each other, both in reſpect to the quanties of forage actually in the ſaid ſtores of the ſaid Meſſ. Meyer and Delius, at Bielfeld aforeſaid, at the time of the invaſion of the French, in the month of July 1759, and of the ſaid forage's being delivered up to be plundered by Major Van Cron-

Cronholm, and what remained taken by the French; and are ſtill farther corroborated by the ſeveral atteſtations upon oath of Mr. Johan Ludwig Balcke, merchant of Herford aforeſaid, who ſwears expreſly and explicitly, "that no part of the ſaid forage was "taken out of the ſaid ſtores by, or for the "uſe or advantage of the ſaid Meſſ. Meyer "and Delius, or any perſon concerned "with, or entruſted by them in any re-"ſpect or ſenſe whatſoever;" but "that "the whole was actually and truly plun-"dered, deſtroyed, and taken," in the manner herein before ſet forth; and of John Hendricke Sieckman, Bernd Henrich Lindeman, and Herman Hendric Brackſiecke, labourers, who had been employed in weighing and making up the ſaid forage, and packing it in the ſeveral ſtores, which they particularly ſpecify, and conſequently could not be miſtaken in what they have ſo circumſtantially ſworn.

Theſe ſeveral atteſtations of all theſe circumſtances being laid before the Prince, by the ſaid Meſſ. Meyer and Delius, they received for anſwer, from his ſecretary

Adjutant-general Reden, " that his Serene " Highneſs had ordered him to grant them " the neceſſary certificates to procure them " payment; and to aſſure them that they " need be under no uneaſineſs about it,"— for which certificate the ſaid ſecretary deſired they would call upon him ſome other time, as the army was juſt then breaking up; which they accordingly did, at Crofdorff, on the twenty-ninth of October following, and received it in the fulleſt and cleareſt manner.

When the ſaid Meſſ. Meyer and Delius had obtained this certificate, they applied to the Prince for an order for payment, when his Serene Highneſs directed them to apply to the Intendency, which they accordingly did; but Mr. Hunter was juſt then ſetting out for England, till his return from whence, he ſaid, he could not attend to this or any other buſineſs: but he returned no more to the army; nor would any of the other Commiſſaries do any thing in it after, becauſe it had happened in his time; a practice that, in many other inſtances as well as this, laid theſe and ſeveral other contractors under the greateſt difficulties.

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In this ſituation the affair remained till the order was iſſued for bringing all unſettled demands, on account of the war, to London, to be liquidated by Commiſſioners appointed for that purpoſe; in conſequence of which this demand was laid before the ſaid Commiſſioners, who, on the eleventh of December 1764, reported thereon to the Lords of the Treaſury—

" That this account had been preſented " to ſeveral officers of the Commiſſariate in " Germany, who refuſed to enter upon, " or make any ſettlement thereof.

" Secondly, that there is no clauſe con- " tained in the contract, which provides " that the entrepeneur ſhall be indemnified " for loſſes ſuſtained on account of captures " or ſeizures made by the enemy, or for " any other loſs or damage whatſoever.

" Thirdly, that there was in general no " *agreement* or *authority* on the part of the " Commiſſariate, whereon this claim of " indemnification can be grounded, to " make it a matter of charge againſt the " crown of Great Britain.—And there- " fore that this account ought not to be " paid."

The inſufficiency of the reaſons given in this report for the rejection of this demand, and conſequently the injuſtice of that rejection, is moſt evident. The refuſal of the ſeveral officers of the Commiſſariate to whom this demand was preſented, after the departure of Mr. Hunter, to enter upon, or make any ſettlement of it, has been accounted for in a manner too well known to be contradicted. It was a neglect of duty of theſe officers, for which the claimants could be in no reſpect anſwerable, as it was not in their power to prevent it. For the officers of the crown, therefore, to make a plea of this refuſal to ſettle the demand, for refuſing to pay it becauſe not ſettled, is taking advantage of their own act of injuſtice, in direct oppoſition to an expreſs maxim of the law, as well as to the univerſal principles of equity.

Equally inſufficient is the ſecond reaſon, "that there is no clauſe contained in the "contract, &c."—*Quod neceſſario intelligitur non deeſt.* Though ſuch a clauſe is not *expreſly inſerted*, it is *neceſſarily underſtood*, becauſe without ſuch indemnification no contract could be made, as no contractor was,

was, or could be, able to bear the loſs; and for this reaſon, and as a proof that ſuch clauſe was always underſtood, the payment of ſeveral demands for loſſes by the enemy can be inſtanced, where no ſuch clauſe was in the contract.

But were it even otherwiſe, and ſuch an expreſs clauſe indiſpenſibly neceſſary, that would not affect this demand, which is not for forage *taken by the enemy*, but *deſtroyed by the expreſs order of the commander in chief of the army*; all whoſe acts, in ſuch capacity, are to be looked upon as the acts of the power whoſe army he commanded.

As therefore contractors have a right to be paid by the crown of Great Britain for forage delivered for the uſe of the Britiſh army; ſo, by the ſame reaſon, they have an equal right to be paid for forage, when deſtroyed by that army! A right, which in this caſe is ſtill further ſtrengthened, could it want further ſtrength, by this, that this forage's not having been delivered was owing ſolely to the failure of the officers of the crown to perform their part toward the delivery of it, by ſupplying the neceſſary carriages.

In a word! It is proved that this forage was brought to Bielfeld for fulfilling a contract made with the Britiſh Commiſſariate, and there deſtroyed by expreſs order of the commander in chief of the Britiſh army; whoſe order, in reaſon and the nature of the thing, is ſufficient authority to make the crown of Great Britain, whoſe army he commanded, liable to pay for it.—To which may be added, that the want of other authority was never objected to it, when preſented to the Commiſſariate in Germany, nor ſuch authority thought neceſſary, till arbitrarily preſcribed long after.—And this is a ſufficient anſwer to the third reaſon given for the rejecting this demand.

For theſe reaſons the ſaid Meſſ. Meyer and Delius have an inconteſtibly juſt right to payment of this demand, amounting to 7662 Ducats : 2 Rd. : 6 Mgr.

STATE of the DEMANDS

OF

NATHAN ISAAC

UPON THE

CROWN of GREAT BRITAIN,

FOR

Forage delivered into the King's Magazines, in Performance of a Contract made by him with the Britiſh Commiſſariate.

ON the twenty-third of July, 1761, a contract was made by Mr. Commiſſary-general Hatton with Mr. Nathan Iſaac, by which the ſaid Iſaac engaged to deliver into the King's Magazines at Oſnabrug 100,000 complete rations of forage, for which he was to be paid at the

rate

rate of 13 ſtivers, Holland currency, for the complete ration.

In order to perform this contract, the ſaid Nathan Iſaac made the neceſſary proviſion, and began his deliveries; but he had delivered no more than 12,388 complete rations, 10,427 rations of oats, and 4369 rations of hay, when, upon the approach of the enemy, the magazine-keeper refuſed to receive any more, as appears by the certificate of Mr. Commiſſary Fraſer, in which he expreſly ſays, that, "the ſituation of the enemy made "it neceſſary for the *proviant ſchreiber* "(the magazine-keeper) to refuſe receiv-"ing the whole."

During the ſtay of the enemy, Nathan Iſaac took every precaution to conceal the forage that remained undelivered; but it was impoſſible to do it ſo effectually as to prevent their diſcovering a conſiderable part of it, which they took, and uſed or deſtroyed.

As ſoon as the enemy removed, the ſaid Nathan Iſaac continued his deliveries;

and, from the thirty-firſt of October to the thirty-firſt of December, both included, delivered, according to the atteſtation of Mr. Schutt, King's magazine-keeper at Oſnabrug, 22,026 rations of oats, and 30 rations of hay, quoted from the accounts of his magazine.

When the accounts of theſe deliveries were preſented to Mr. Commiſſary Halſey, to be certified, he objected to the vouchers, as not being dated within the time limited by the contract, and applied to Mr Hatton, to know if he had prolonged it; and on his anſwering that he had not, Mr. Halſey refuſed to certify the account; nor could the ſaid Nathan Iſaac ever after prevail to have it taken into farther conſideration, when he would have eaſily removed that objection; ſo that it lay in the office of the Control till the order was iſſued for bringing all demands on account of the war to London, to be liquidated by Commiſſioners appointed for that purpoſe, before whom this account was accordingly laid, and by them reported upon to the Lords of the Treaſury, on the ſeventeenth of May 1765, as follows:

---" It

—"It appearing from letters, which "have paſſed between Mr. Hatton and "Mr. Fraſer, that the vouchers pro- "duced not being dated within the limits "of the contract, Mr. Fraſer was in doubt "whether he could paſs them, or not; "and wrote to Mr. Hatton to know whe- "ther he had given orders for prolonging "the ſaid contract, to which he anſwered "in the negative; we are of opinion that "theſe receipts thus dated are not founded "on any juſt authority, whereby they can "become a charge againſt the crown," &c.—

The inſufficiency of the reaſon given for the rejection of this account, and conſequently the injuſtice of that rejection, are moſt evident. Though Mr. Hatton had not prolonged the time of the contract, was there no other perſon by whom it could be prolonged, or no other way of prolonging it?—

In many contracts, the limitation of time was expreſly qualified by this clauſe,

clauſe, " *If no intervention of the enemy* " *hinders.*" A clauſe, in the nature of ſuch affairs, ſo indiſpenſible, that it muſt neceſſarily be underſtood where it was not expreſſed; as who would undertake without ſuch a clauſe, what, in ſuch a caſe, it muſt be impoſſible for him to perform?—That the Commiſſariate held this clauſe to be thus indiſpenſible, and of courſe neceſſarily underſtood, is ſufficiently proved by their availing themſelves of it, on this very occaſion; as appears by the before-mentioned expreſs words of Mr. Commiſſary Fraſer, in his certificate of the deliveries made upon this contract, before this interruption from the enemy, " that the ſitua- " tion of the enemy made it neceſſary for " the proviant ſchreiber to refuſe receiv- " ing the whole."—For as all contracts are mutually binding in all points, if the magazine-keeper (the officer of the Commiſſariate) had a right to *refuſe receiving*, the contractor's *not delivering* within the time limited, *which was prevented by this refuſal*, cannot make the limitation abſolute, and preclude his right of delivering the reſidue after.

Nor

Nor do the following words of Mr. Fraſer, "and therefore no further delivery will "be made upon this contract till further "order"—take away this right; for if the magazine-keeper had a ſufficient authority of himſelf to refuſe receiving, he muſt neceſſarily have alſo a ſufficient authority of himſelf to recontinue the receipt after, without expreſs order from any other; and his vouchers of ſuch receipt are ſufficient authority to make it a juſt charge againſt the crown.

In a word, as the failure of making the deliveries within the time limited, proceeded not in any reſpect from the contractor, but from the officer of the Commiſſariate, though for a reaſon unqueſtionably ſufficient, and as the ſaid officer afterwards accepted the ſaid deliveries, when that reaſon was removed, that acceptance is an implicit prolongation of the time limited by the contract; or rather a new contract without limitation.

As the reaſon therefore given for the rejection of this demand is evidently inſufficient,

ficient, the ſaid Nathan Iſaac has an indiſputably juſt right to payment of the amount, being 1350 Ducats.

STATE

STATE of the DEMANDS

OF

Meff. ALBERS and Co.

ON THE

CROWN of GREAT BRITAIN,

STATE of the DEMANDS

OF

Meſſ. ALBERS and Co.

UPON THE

CROWN of GREAT BRITAIN,

FOR

Loſs upon a Quantity of Hay and Straw, provided to fulfil a Contract with the Britiſh Commiſſariate, and left upon their Hands at the Peace—and upon a Quantity of Oats provided to fulfil the ſame Contract, and deſtroyed by the Enemy, in their Depots, where it lay for want of Carriages, which the Commiſſariate was obliged to furniſh them with, for delivering it.

ON the twenty-fifth of October 1761, a contract was made at Munſter by Mr. Commiſſary-general Halſey, with Meſſ. Albers and Co. by which the ſaid Albers and Co. engaged to deliver 200,000 complete rations of forage into the King's Magazines at Oſnabrug within

two months, for which he was to be paid at the rate of 14½ Stivers, Holland currency, for the complete ration, the Commiſſariate to furniſh the carriages for delivering it, to be paid for according to the tariff; and to pay for any part of the ſaid forage, which ſhould be taken by the enemy in actual tranſport, &c.

In order to fulfil this contract, the ſaid Meſſ. Albers and Co. directly provided the neceſſary quantities of forage, and collected them in their depots, the oats at Haſelunne, on the river Ems, in the biſhopric of Munſter, the neareſt place to Oſnabrug to which they could bring it by water carriage; and the hay and ſtraw at Lemford and Oſnabrug; and then applied to the Commiſſariate for carriages, according to their contract; but, inſtead of obtaining them, received for anſwer, that the other ſervices of the army were then ſo urgent, that a ſufficient number could not be ſpared them, ſo that the time of the contract expired before it could be completed, though all the forage lay in their depots.

The Commiſſariate, however, ſenſible that this delay proceeded not from any fault of the contractors, inſtead of making it a

reaſon for putting a ſtop to their deliveries, not only urged the continuance of them in the moſt preſſing manner, but alſo obliged the ſaid contractors to purchaſe oats, at an advance price, at and near Oſnabrug, becauſe carriages could not be ſpared to tranſport them from Haſelunne, where they lay; and accordingly they continued their deliveries till the eighth of May 1762, when they were ſtopped by an order from ſir James Cockburne, it not being thought neceſſary to augment the magazines at Oſnabrug at that time.

Apprehenſive of the loſs which muſt enſue from this, Meſſ. Albers and Co. offered to complete the remainder of their contract at Munſter, but before they could receive a definitive anſwer, the army marched away into the country of Heſſe, ſo that there was no farther occaſion for ſtocking the magazines in the biſhopric of Munſter.

On receiving information of this, the ſaid Meſſ. Albers and Co. applied to the Commiſſariate to know how the forage thus left upon their hands ſhould be diſpoſed of, but could never receive a poſitive anſwer; ſo that they knew not how to act, till the

ſale of the Britiſh magazines in the year 1763, ſuggeſted to them to ſell theirs alſo; which they did at near 100 per cent. higher price, than the Britiſh magazines were ſold for, and conſequently leſſened their juſt demands upon the Crown of Great Britain, by ſo much.

The loſs upon the ſale of theſe quantities of hay and ſtraw, (that is to ſay, what the produce of that ſale fell ſhort of the contract-price), together with the ſeveral expences attending the ſaid ſale, and the keeping of the ſaid forage for ſo long a time, amounted to 5663 Guilders 10$\frac{3}{4}$ Mgr. the accounts of which were preſented regularly to the Control; but the liquidation of them could never be obtained, till the order was iſſued for bringing all demands on account of the war to London, to be liquidated by Commiſſioners appointed for that purpoſe.

Nor was this the only loſs occaſioned by the failure of the Commiſſariate to ſupply carriages for the performance of this contract.

It has been ſhewn that the neceſſary quantity of oats was lodged in depots at Haſelunne; of theſe oats there remained a large

large quantity undelivered, when the ſtop was put by ſir James Cockburne to any farther deliveries in the biſhopric of Munſter; but before the ſaid oats could poſſibly be diſpoſed of, as the hay and ſtraw had been, the enemy took poſſeſſion of that part of the country, on the ſeventh, eighth, and ninth of July 1762, and there took, uſed, and deſtroyed all that they found in the ſaid depots.

The vouchers of this loſs being laid before Mr. Commiſſary Dyer, he examined and allowed them; but when the account was preſented to be certified, it appearing that 15799 rations of oats had been in the depots, more than were neceſſary for completing the contract, that exceſs was rejected, and ſo much only certified as, together with what had been delivered, completed the contract; upon which certificate payment was accordingly obtained; as it was known that the failure of the Commiſſariate to ſupply carriages for delivering it, purſuant to the contract, was the cauſe of theſe oats remaining in the depots; and conſequently, that the Commiſſariate was juſtly liable to pay for the loſs of them.

The ſame reaſon entitled the contractors alſo to payment for this exceſs, the cauſe of which was, the Commiſſariate's having obliged the contractors to purchaſe oats, at or near Oſnabrug, to continue their deliveries, becauſe carriages could not be ſpared to tranſport them from Haſelunne, as herein before ſet forth; and accordingly the account of this exceſs, with the vouchers allowed by Mr. Commiſſary Dyer, was laid before the Control, but the liquidation of it could never be obtained, till the order was iſſued for bringing all demands on account of the war to London, to be liquidated by Commiſſioners appointed for that purpoſe. —This account amounted to 6417 Guilders 19 Stivers.

In conſequence of that order, theſe two accounts of the loſs upon the ſale of the hay and ſtraw; and of the exceſs of oats in the depots at Haſelunne, were laid before the ſaid Commiſſioners, who on the twenty-eighth of February 1765, made the following report thereon, to the Lords of the Treaſury.

" We have taken under conſideration an " account (preſented on the twenty-ſeventh " of December laſt, under N° 57. of Mr.

" Legh's

" Legh's liſt of accounts left in the Office
" of Control) of indemnification, con-
" cerning a parcel of forage remaining
" upon hand, in conſequence of a contract
" made with the Britiſh Commiſſariate by
" Albers and Co. and the charges ariſing
" therefrom, amounting in all, to 5663
" Guilders 10$\frac{3}{4}$ Stivers; and for the in-
" formation of their lordſhips do report,

" That it does not appear by any paper
" delivered to us, that the exiſtence of
" any depots of hay and ſtraw, mentioned
" in the firſt part of the ſaid account, were
" authentically aſcertained; and even if they
" had been ſo, that a general order to Mr.
" Reinecke, to deliver what forage he
" could, without ſpecifying the quantity,
" which is all the authority laid before us,
" can ever engage the crown to pay for
" any quantity he may pretend to have col-
" lected in depot.

" Upon the remaining article of this
" account, for charges ariſing from the
" want of carriages for the delivery of a
" quantity of oats alleged to have remained
" at Haſelunne,

" We likewiſe report that the exiſtence
" of the depots referred to, and ſaid to be

" in East Friesland, are by no papers before
" us authentically ascertained; and even
" if they did exist, that we do by no
" means apprehend the crown can be en-
" gaged to pay for the errors arising in the
" contractor's execution of his contract,
" by laying in depots at such a distance
" from the magazine at Osnabrug, as did
" not answer for the execution of their
" contract, when they were obliged to
" make others, by which the contract was
" fulfilled. We are therefore of opinion
" that the said demands, amounting as
" above to 5663 Guilders 10¾ Stivers,
" *ought not to be paid.*"

The inaccuracy of this report, and the insufficiency of the reasons upon which the rejection of these demands is founded, are so obvious, that they scarce require being pointed out.

The existence of the depots of hay and straw at Lemford and Osnabrug is authentically proved by a *notarial document* of G. D. Bahrens, imperial sworn notary-public, attesting the sale of the said quantity of hay and straw, the persons who bought them, and the prices for which they were sold; than which the nature of the case, and the laws

laws of the country do not admit of ſtronger proof.

As to the ſecond reaſon, it is ſufficient to ſay, as hath been herein before ſhewn, that the demand is not founded on a general order to deliver forage without ſpecifying the quantity, but on an expreſs contract with the Commiſſariate; which contract indiſputably engages the crown to pay for the quantity collected in their depots.

To the objection made to the ſecond article, that is, the loſs of the oats at Haſelunne, the ſtate of that loſs herein before ſet forth, is a ſufficient anſwer. The exiſtence of the depots at Haſelunne was proved certainly, when the reſidue of the loſs there was paid, and is farther proved by the atteſtation of Mr. Commiſſary Elliot, who, in a letter of the third of June 1762, (preceding the loſs) ſays expreſly, "that he "had given orders to the magazine-di-"rector Mr. Ruſſel, to examine the depots "at Haſelunne," &c.

As to the objection to theſe depots, of their been formed in Eaſt Frieſland! it is beneath an anſwer. Haſelunne is in the biſhopric of Munſter, and the neareſt place upon the river Ems to Oſnabrug.—

The

The miſtake by which the amount of this account is ſunk in the preceding, is a ſufficient proof of the inaccuracy of this report.

As the reaſons therefore given for the rejection of theſe two accounts are thus proved to be without foundation, the ſaid Meſſ. Albers and Co. have a juſt right to payment of the joint amount of them, being 12080 Guilders and 29¾ Stivers, Holland currency.

FINIS.

STATE of a DEMAND

OF

HENRICK MULLER.

STATE of a DEMAND

OF

HENRICK MULLER,

UPON THE

CROWN of GREAT BRITAIN,

FOR

An Over-charge of Carriage deducted from his Accounts by the Commiſſariate in Germany.

IN ſettling the accounts of deliveries made by Henrick Muller, in performance of a contract with ſir James Cockburne, a miſtake was made in the diſtances between his depots and the magazines; and in conſequence thereof, an over-charge of carriage deducted from his ſaid accounts in the certificate granted upon them by Mr. Commiſſary-general Legh; and of courſe in the payment he received.

Upon the diſcovery of this miſtake immediately after, Mr. Commiſſary Legh granted

granted the ſaid Muller a certificate of this over-charge, dated at Hanover, June 30, 1763; but before payment could be received the offices were cloſed, and the order iſſued for bringing all demands on account of the war to London, to be liquidated by Commiſſioners appointed for that purpoſe.

The hurry and confuſion cauſed by the ſhortneſs of the time limited for bringing over theſe demands is too well known. In that hurry, this certificate was confounded among other papers, where it remained undiſcovered, till ſince the cloſe of the ſaid commiſſion, and conſequently never could be preſented to them.

As there cannot poſſibly be any objection made to this certificate, the ſaid Henrick Muller therefore has a juſt right to payment of this over-charge, amounting to 382 Ducats 2 Rd. and 30 Mgr.

FINIS.